BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

SINDY LEA RANDALL)	
Claimant)	
VS.)	
)	Docket Nos. 236,397
DILLON COMPANIES, INC.)	& 236,398
Respondent)	
Self-Insured	ý	

ORDER

Respondent appeals Administrative Law Judge Nelsonna Potts Barnes' December 6, 2000, Award. The Board heard oral argument on May 16, 2001.

APPEARANCES

Randall J. Price of Wichita, Kansas, appeared on behalf of the claimant. Scott J. Mann of Hutchinson, Kansas, appeared on behalf of the self-insured respondent.

Record and Stipulations

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

Issues

These two docketed claims were consolidated by the Administrative Law Judge (ALJ) for litigation purposes.

Docket No. 236,397

The first docketed claim involves a low back injury claimant sustained while employed by the respondent on February 20, 1996. Respondent provided conservative medical treatment for claimant's low back injury. After claimant met maximum medical improvement, respondent returned claimant to work at the same wage. The ALJ awarded claimant a 9.34 percent permanent partial disability based on functional impairment because claimant had returned to work at the same wage and work disability was not an issue.¹

¹ See K.S.A. 44-510e(a) (1993 Furse).

Respondent appeals the 9.34 percent permanent partial general disability award to the Appeals Board (Board). The respondent, however, at oral argument, dismissed its appeal in regard to the 9.34 percent award. Thus, the Board will not review the ALJ's Award entered in this docketed claim.

Docket No. 236,398

The second docketed claim involves a left knee injury claimant sustained on September 19, 1996, while employed by the respondent. Claimant testified she injured her left knee as she was carrying donuts out of a freezer, slipped on the wet floor, and fell. As a result of the fall, claimant underwent surgery to repair medial and lateral meniscus tears and the complete disruption of the anterior cruciate ligament. The ALJ awarded claimant a 13.34 percent permanent partial disability of the left leg. ² The ALJ arrived at the 13.34 percent permanent partial disability by giving equal weight to the permanent functional impairment rating opinions of Dr. C. Reiff Brown, Dr. P. Brent Koprivica, and Dr. Pedro A. Murati.

On appeal, respondent argues Dr. Koprivica utilized the Third Edition Revised instead of the statutorily required Fourth Edition of the AMA <u>Guides to the Evaluation of Permanent Impairment</u> in arriving at his impairment rating.³ The respondent, therefore, asserts Dr. Koprivica's 25 percent rating cannot be given equal weight in arriving at claimant's permanent partial disability as a result of the left knee injury. The respondent contends the appropriate award for claimant's left knee injury is to equally weigh Dr. Murati's 10 percent rating with Dr. Brown's 5 percent rating, both arrived at by utilizing the AMA <u>Guides</u>, Fourth Edition, for a 7.5 percent permanent functional impairment rating.

In contrast, claimant contends that her left knee injury was not a new and separate injury but was the natural and probable consequence of her February 20, 1996, low back injury. Accordingly, claimant argues the only credible opinion contained in the record concerning claimant's permanent disability is Dr. Koprivica's 33 percent whole body impairment rating which combines claimant's low back impairment rating with claimant's left knee impairment rating.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

² See K.S.A. 1996 Supp. 44-510d(a)(16).

³ See K.S.A. 1996 Supp. 44-510d(a)(23).

Docket No. 236,397

As noted above, the respondent dismissed this appeal and the Award in this docketed claim is final.

Docket No. 236,398

The Board finds that the ALJ's conclusion that claimant sustained a 13.34 percent permanent partial disability of her left leg resulting from the September 19, 1996, work-related accident should be affirmed. The Board finds the ALJ's Award sets forth findings and conclusions that are accurate and supported by the record. It is not necessary to repeat those findings in this order. Those findings and conclusions are adopted by the Board.

In particular, the Board finds, that on September 19, 1996, while working for respondent, claimant had a separate and distinct accident when she slipped on some water on the floor and fell injuring her left knee. The water on the floor caused claimant to fall and the resulting fall injured claimant's left knee. Because claimant suffered a separate intervening accident, claimant's left knee injury is not the natural and probable consequence of her preexisting low back injury.⁴

The Board is mindful that Dr. Koprivica, during his deposition testimony, indicated that he had utilized the AMA <u>Guides</u>, Third Edition Revised to arrive at the 25 percent permanent functional impairment rating to claimant's left knee. But, in Dr. Koprivica's report dated October 8, 1998, which was admitted into evidence at Dr. Koprivica's deposition, the doctor, at page 12, indicated, "I would note that use of the American Medical Association, 'Guides to the Evaluation of Permanent Impairment,' Fourth Edition, would assign a similar level of impairment." The Board concludes, based on that explanatory paragraph, that the ALJ found Dr. Koprivica's 25 percent impairment rating opinion was also determined utilizing the statutorily required AMA <u>Guides</u>, Fourth Edition. Thus, the Board finds, as did the ALJ, there is no reason not to give Dr. Koprivica's rating equal weight with the ratings of Dr. Brown and Dr. Murati for a 13.34 percent permanent functional impairment of the left leg.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the ALJ Nelsonna Potts Barnes' December 6, 2000, Award, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

⁴ See Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P. 2d 697 (1973)

4

DOCKET NOS. 236,397 & 236,398

Dated this	_ day of July, 2001.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Randall J. Price, Wichita, KS.
Scott J. Mann, Hutchinson, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director